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Filing date: **09/14/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91200832
Party	Defendant Honda Giken Kogyo Kabushiki Kaisha (Honda Motor Co., Ltd.)
Correspondence Address	SARAH R FRAZIER WILMER CUTLER PICKERING HALE AND DORR LLP 60 STATE ST BOSTON, MA 02109 UNITED STATES michael.bevilacqua@wilmerhale.com, john.regan@wilmerhale.com, shira.hoffman@wilmerhale.com, sarah.frazier@wilmerhale.com, si- lena.paik@wilmerhale.com,
Submission	Defendant's Notice of Reliance
Filer's Name	Silena Paik
Filer's e-mail	silena.paik@wilmerhale.com
Signature	/s/ Silena Paik
Date	09/14/2015
Attachments	NOR 6 (Public Version).pdf(842266 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

BRIGGS & STRATTON CORPORATION and KOHLER CO.,)	
)	
Opposers,)	Opposition No. 91200832 (parent)
)	
v.)	Opposition No. 91200146
)	
HONDA GIKEN KOGYO KABUSHIKI KAISHA,)	Application Serial No. 78924545
)	
Applicant.)	
)	
)	

APPLICANT’S SIXTH NOTICE OF RELIANCE

Pursuant to 37 C.F.R. § 2.120(j), Applicant Honda Giken Kogyo Kabushiki Kaisha (“Honda”) submits, and gives notice of its reliance on, Opposer Kohler Co.’s (“Kohler”) responses to certain of Honda’s Requests for Admission served in this proceeding.

Attached hereto are Kohler’s responses to certain of Honda’s Requests for Admission identified below at the specified Trial Exhibit Number.

<u>Description</u>	<u>Specific Response No.</u>	<u>Applicant Trial Exhibit No.</u>
Opposer Kohler’s Responses to Applicant’s First Set of Requests for Admission	2,4 and 5	H

Honda intends to rely upon and hereby make of record the attached exhibit.

Respectfully submitted,

Dated: September 14, 2015

/s/ Silena Paik

John Regan
Vinita Ferrera
Silena Paik
Sarah Frazier
Shira Hoffman
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and Dorr LLP
Boston, MA 02109
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Attorneys for Honda Giken Kogyo
Kabushiki Kaisha

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Sixth Notice of Reliance was served by FedEx
this 14th day of September, 2015 upon:

Kenneth Nowakowski
Melinda Giftos
Whyte Hirschboeck Dudek S.C.
555 E. Wells Street, Suite 1900
Milwaukee, Wisconsin 53202

And

Robert N. Phillips
Seth B. Herring
Reed Smith LLP
101 Second Street
Suite 1800
San Francisco, California 94105

/s/ Silena Paik
Silena Paik

Applicant Exhibit H

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BRIGGS & STRATTON CORPORATION and
KOHLER CO.,

Opposer,

vs.

HONDA GIKEN KOGYO KABUSHIKI
KAISHA,

Applicant.

Opposition No. 91200832 (parent)

Opposition No. 91200146

Application Serial No. 78924545

**OPPOSER KOHLER CO.'S RESPONSES TO
APPLICANT'S FIRST SET OF REQUESTS FOR ADMISSION**

Opposer, Kohler Co. ("Kohler"), hereby provides the following responses to Applicant's ("Honda Giken Kogyo Kabushiki") First Set of Requests for Admission as follows:

GENERAL OBJECTIONS

1. Opposer objects to Applicant's definition of "GX Engine Trademark" as vague and ambiguous to the extent it includes the phrase "any other mark used by Applicant that is a colorable imitation of the mark."

2. Opposer objects to the extent the Requests for Admission ("Requests") seek material protected from disclosure by the attorney-client privilege, attorney work-product rule, other applicable privileges (hereinafter, collectively "Privileged Information"), and/or obligations of confidentiality running to a third party.

3. Opposer objects to the Requests to the extent they seek to impose obligations beyond those provided in the Federal Rules of Civil Procedure.

4. Opposer objects to the extent the Requests seek information that is of public record and is, therefore, equally accessible to Applicant.

5. Opposer objects to the extent the Requests seek information that is not under the possession and control of Opposer.

6. Opposer objects to the extent the Requests seek information that is trade secret or other confidential research, development or commercial business information.

7. Opposer objects to the Requests to the extent they are not limited to any reasonably relevant time period and to the extent that because they are unlimited, they are overbroad, impose an undue burden and are not likely to lead to the discovery of admissible information.

8. All responses given herein are made subject to each and every general objection, and to the specific objections made in response to the Requests. In providing a response, Opposer has not waived any objection on the grounds of competency, relevancy, materiality, privilege, admissibility as evidence, or any other ground in this or any other action. Nor has Opposer waived its right to make additional objections to further discovery requests. Nor is any response to be deemed an admission or acknowledgment that the information sought is within the proper scope of discovery.

9. Opposer objects to all introductory instructions and definitions to Applicant's Requests to the extent the instructions or definitions purport to enlarge, expand, or alter in any way the plain meaning and scope of any specific Request on the ground that such enlargement, expansion, or alteration renders said Request vague, ambiguous, unintelligible, unduly broad and uncertain.

10. Opposer objects to each Request to the extent it purports to require Opposer to obtain information outside of its possession, custody, and control from other persons or entities.

11. Opposer reserves the right to modify, amend or supplement its General Objection and any additional specific objections provided below.

12. Opposer reserves the right to supplement these responses during the course of discovery as additional information is ascertained.

13. Each and every one of the foregoing General Objections is incorporated by reference into each and every response below.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that the images shown at Bates numbers KOHLER000030 through KOHLER000032, attached hereto as **Exhibit A**, are true and accurate depictions of the Kohler SH265 engine that has been previously or is currently sold or offered for sale by YOU in the United States.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Subject to and without waiving the foregoing general objections, Opposer hereby responds as follows: Admits.

REQUEST FOR ADMISSION NO. 2: Admit that the engine shown at Bates number KOHLER000034, attached hereto as **Exhibit B**, is a true and accurate depiction of a horizontal shaft engine that has been previously or is currently sold or offered for sale by YOU in the United States.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: Subject to and without waiving the foregoing general objections, Opposer hereby responds as follows: Admits.

REQUEST FOR ADMISSION NO. 3: Admit that the engine shown at Bates number KOHLER000035, attached hereto as **Exhibit C**, is a true and accurate depiction of a horizontal shaft engine that has been previously or is currently sold or offered for sale by YOU in the United States.

RESPONSE TO REQUEST FOR ADMISSION NO. 3: Subject to and without waiving the foregoing general objections, Opposer hereby responds as follows: Admits.

REQUEST FOR ADMISSION NO. 4: Admit that the engine shown at Bates number KOHLER000130, attached hereto as **Exhibit D**, is a true and accurate depiction of a horizontal

shaft engine that has been previously or is currently sold or offered for sale by YOU in the United States.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: Subject to and without waiving the foregoing general objections, Opposer hereby responds as follows: Admits.

REQUEST FOR ADMISSION NO. 5: Admit that the engine shown at Bates number KOHLER000139, attached hereto as **Exhibit E**, is a true and accurate depiction of a horizontal shaft engine that has been previously or is currently sold or offered for sale by YOU in the United States.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: Subject to and without waiving the foregoing general objections, Opposer hereby responds as follows: Admits.

REQUEST FOR ADMISSION NO. 6: Admit that the engine shown at Bates number KOHLER000144, attached hereto as **Exhibit F**, is a true and accurate depiction of a horizontal shaft engine that has been previously or is currently sold or offered for sale by YOU in the United States.

RESPONSE TO REQUEST FOR ADMISSION NO. 6: Subject to and without waiving the foregoing general objections, Opposer hereby responds as follows: Admits.

REQUEST FOR ADMISSION NO. 7: Admit that the engine shown at Bates number KOHLER000145, attached hereto as **Exhibit G**, is a true and accurate depiction of a horizontal shaft engine that has been previously or is currently sold or offered for sale by YOU in the United States.

RESPONSE TO REQUEST FOR ADMISSION NO. 7: Subject to and without waiving the foregoing general objections, Opposer hereby responds as follows: Admits.

REQUEST FOR ADMISSION NO. 8: Admit that the document at Bates range KOHLER000119, attached hereto as **Exhibit H**, is a true and correct copy of data reflecting unit sales and revenues in the United States for the years 1991 through 2011 for the engine models listed in the column titled "Model Family" on that document.

RESPONSE TO REQUEST FOR ADMISSION NO. 8: Opposer objects to this request as vague and ambiguous as to "true and correct copy of data," and seeking information that is irrelevant to the subject matter of this action, and not likely to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing general and specific

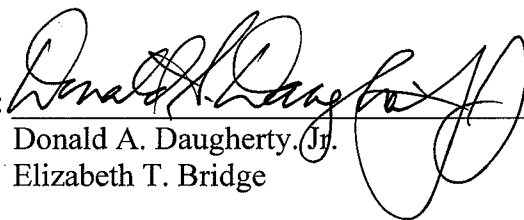
objections, Opposer hereby responds as follows: Denies, and states that the document reflects global sales. Accordingly, Opposer will supplement its Second Supplemental Response to Interrogatory No. 5 forthwith.

REQUEST FOR ADMISSION NO. 9: Admit there has been an instance in which a Person expressed confusion or mistake as to the affiliation, connection, or association of the Kohler SH265 engine with Applicant or the GX Engines.

RESPONSE TO REQUEST FOR ADMISSION NO. 9: Opposer objects to this request as seeking information that is irrelevant to the subject matter of this action, and not likely to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing general and specific objections, Opposer hereby responds as follows: Denies.

Dated this 14th day of September, 2012.

WHYTE HIRSCHBOECK DUDEK S.C.
Attorneys for Opposer Kohler Co.

By: 
Donald A. Daugherty, Jr.
Elizabeth T. Bridge

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EXHIBIT B

5 HP SINGLE HORIZONTAL

The Kohler Command 5 horizontal shaft engine is more than just a powerful small engine. Low vibration, low noise and ease of drop-in replacement make the Command 5 efficient, dependable and versatile.

Quiet. Smooth. You can be assured of this with Command's quiet muffler, lightweight piston and counter-weighted crankshaft.

The high energy electronic ignition generates a stronger spark at a lower cranking speed. The Command ignition, combined with automatic compression release, ensures dependable first-time starts.

The compact, slant cylinder design allows the Command 5 to fit most applications. A large 5 quart fuel tank extends running time between fill-ups; up to six hours in most applications.

Command's 25 percent greater displacement than other 5 hp OHV engines results in 15 percent torque rise. This superior reserve power lets Command handle big jobs without engine stall. Kohler's optional Oil Sentry™ warns you if the oil level is low. Easy access fill and drain locations make changing oil a snap.



COMMAND

EXHIBIT D

Alca Advantage Mag.



**SUPERIOR
ADVANTAGE**

Team up with KOHLER Command PRO CS single-cylinder engines. You can count on effortless and dependable starting from an automatic compression release and electronic ignition. Our advanced overhead-valve, air-cooled design delivers superior power and torque, quieter operation, and longer engine life. Plus, larger fuel tanks and improved fuel efficiency mean you stay on the job longer. And we back that performance with a top-notch dealer network, unsurpassed parts availability, and the best two-year limited warranty in the industry. For an exceptional engine, specify the versatile, hard-working KOHLER Command PRO CS.

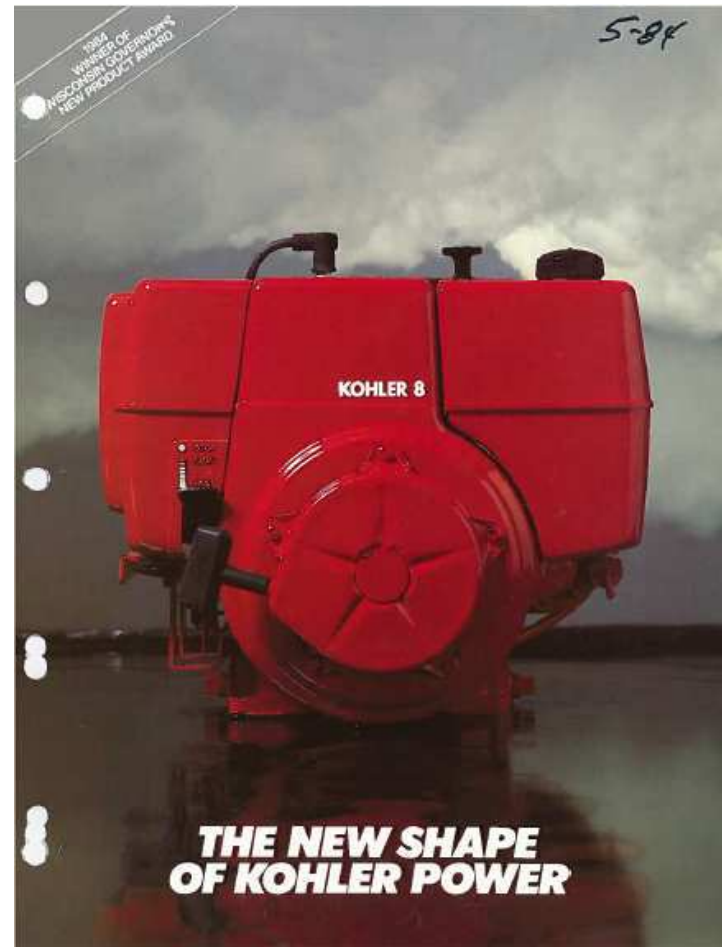
KOHLER engines

Seek the innovation. Demand the power.
kohlereengines.com 1-800-544-2444 Ext. PWY

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EXHIBIT E

Magnum 8 HP (1984)



Model (s)	Magnum 8
Start of Production	1984
End of Production	2010